IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

WA.No. 1057 of 2004()

{IN O.P.NO.13377/2003 OF THIS COURT}
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APPELLANT: RESPONDENTS IN O.P.
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1. INDIAN OVERSEAS BANK, REP. BY ITS CHAIRMAN & MANAGING DIRECTOR, 763, ANNA SALAI, CHENNAI 600 002.

2. THE GENERAL MANAGER(PERSONAL) INDIAN OVERSEAS BANK, 763, ANNA SALAI, CHENNAI - 600 002.

3. THE CHIEF MANAGER, INDIAN OVERSEAS BANK, FREE SCHOOL STREET, CALCUTTA 700 016.

BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL)

RESPONDENTS: PETITIONER:

A.V.MATHEW S/O.VARGHESE,
AREETHADATHIL HOUSE, CHOVOOR P.O.
KOTTAYAM.

BY ADVS. SRI.S.SREEKUMAR
SRI.MOHAN PULIKKAL
SRI.SHAJI THOMAS PORKKATTIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ALONG WITH WA NO.1175 OF 2004 ON 27/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

W.A.No.1057 & 1175 of 2004 E

Dated this the 27th day of November, 2006.

JUDGMENT

Abdul Gafoor, J.

Both these appeals arise from the judgment in O.P.No.13377/03 filed by the appellant in W.A.No.1175/04, who will hereinafter be described as the writ petitioner.

2. Ext.P8 notice was issued on the writ petitioner invoking Regulation 20(1)(a) of the Indian Overseas Bank Officers' Service Regulations, 1979 (for short 'the Regulations) to send him away from the service without initiating disciplinary action. This finally culminated in Ext.P11 order dated 21.2.2003 whereby his services were terminated. In the meantime, he had applied for voluntary retirement on the basis of Ext.P5 scheme announced by the bank, the appellant in

W.A.No.1057/04, which was valid during the period from 15.12.2000 to 19.1.2001. This application was rejected on the ground of administrative reasons, as is revealed by Ext.P7. The writ petitioner impugned Ext.P7 in O.P.No.16703/01 which resulted in Ext.P10 judgment. A learned single Judge of this court quashed Ext.P7 and directed reconsideration of his application for voluntary retirement. The reconsideration resulted in Ext.P12 again rejecting his application for voluntary retirement. It was in the above circumstances, the writ petitioner approached this court impugning Ext.P11 whereby his services were terminated invoking Regulation 20(1)(a) of the Regulations and Ext.P12 whereby his application for voluntary retirement had been rejected. The learned single Judge accepted the challenge against Ext.P11, but repelled the challenge against Ext.P12. Therefore, these appeals by both the parties.

3. First of all, we will deal with the appeal filed by the bank, W.A.No.1057/04. The contention of the bank is that the learned single Judge ought not to have quashed Ext.P11. The writ petitioner had been absent continuously without the leave being granted. Thus, he was not performing his duty. Therefore, his performance was totally unsatisfactory and was thus inadequate. In respect of persons whose performance was not satisfactory, the bank is enabled to invoke Clause 20(1)(a) of the Regulations and to terminate the services of the incumbent concerned without following the usual procedure. Therefore, he was issued with Ext.P8 notice invoking that provision and finally it was decided to terminate his services as done in Ext.P11.

4. It is submitted that both Exts.P8 and P11 will reveal that Regulation 20(1)(a) had been invoked by a competent officer and not by the signatory of the said communications. The Chief Officer, who had sent

the said communication had clearly spelt out in those communications that it was the competent authority who issued notice. Therefore, the learned single Judge was not justified, in finding, that Ext.P8 and consequently Ext.P11 were incompetent. It is further submitted that non-reporting for duty, in spite of non-sanctioning of the leave is the end result of the utmost unsatisfactory performance by an employee. Therefore, this was a case where the competent authority could have invoked Regulation 20(1)(a).

5. Referring to the application for leave submitted by the writ petitioner and its non-grant, it is stated in Ext.P8 as follows:

> ***"You should therefore, report for duty within 15 days from the date of this letter failing which your services will be automatically terminated as per Indian Overseas Bank Officers' Service Regulations. Please also note that in case you report for duty before the date mentioned, the Bank reserves its right to take***

appropriate disciplinary action against you, as deemed fit, for your unauthorised absence, etc."

6. The aforesaid quotation from Ext.P8 reveals that the reason for invocation of Regulation 20(1)(a) is that he was not reporting for duty and that in case he had reported for duty within 15 days of the receipt of Ext.P8, he would have been admitted to duty.

7. But when a person is proposed to be terminated invoking Regulation 20(1)(a), there arises no question of the incumbent being admitted to duty. In this case, it is profitable to read Clause 20(1)(a). It reads as follows:

"Subject to sub regulation 3 of regulation 16, where the Bank is satisfied that the performance of an officer is unsatisfactory or inadequate or there is a bona fide suspicion about his integrity or his retention in the Bank's service would be prejudicial to the interests of the Bank, and where it is not possible or expedient to proceed against him as per the disciplinary procedure, the Bank may terminate his services on giving him three months' notice or emoluments in lieu

thereof in accordance with the guidelines issued by the Government from time to time."

The said clause is to be invoked when the authority is not satisfied about the performance of an officer or if the performance of an officer is unsatisfactory or inadequate. There arises no question of such a person being continued in duty when that regulation is invoked.

8. Moreover, Ext.P8 does not spell out that, at any point of time, the competent authority had considered that the performance of the writ petitioner was totally unsatisfactory. On the other hand, he had been, on more than one occasion, promoted including to the middle management, based on the performance. A person, whose performance was unsatisfactory could not have been thus promoted.

9. Therefore, Ext.P8 was not a notice really invoking Regulation 20(1)(a) of the Regulations. Ext.P8 finally resulted in Ext.P11 order which reads as follows:

> ***"We refer our notice dated 25.11.2002 under Regulation 20(1)(b) of Indian Overseas Bank Officers' Service Regulations 1979, sent to you, instructing you to report for duty within 15 days from the date of the letter, failing which, it was advised to you that your services would be automatically terminated as per the above Regulation. As you have not reported for duty till date, it is clear that you have no intention to report for duty.***
>
> ***Under the above circumstances and as already stated in our notice dt.25.11.2002, it has been decided by the Competent Authority to invoke provisions of Regulation 20(1)(a) of Indian Overseas Bank Officers' Service Regulations 1979 and terminate your services from the Bank.***
>
> ***Accordingly your services in our Bank will stand terminated with effect from 21.04.2003 in terms of Regulation 20(1)(a) of Indian Overseas Bank Officers' Service Regulations. You are advised to settle your dues with the Bank immediately."***

A reading of Ext.P11 is thus clear that the termination of the service was not on the ground of unsatisfactory performance, but only on the reason that he did not report for duty within 15 days of the receipt of Ext.P8

notice. Thus, this was not a proper invocation of regulation 20(1)(a).

10. Even if we accept the contention of the appellant bank that the invocation was done by the competent authority, it was not a proper invocation with due advertence to the purpose behind Regulation 20(1)(a). Mere absence of an 'employee' either authorised or unauthorised can invite any disciplinary action and not invocation of the said regulation. Therefore, we sustain the judgment of the learned single Judge so far as Ext.P10 is concerned, on the aforesaid reasons. Necessarily, W.A.NO. 1057/04 has to fail. We dismiss it.

11. Now, we will consider W.A.NO. 1175/04 filed by the writ petitioner, insofar as his challenge against Ext.P12 was repelled. As already mentioned above, in Ext.P12, his application for voluntary retirement from service was rejected. That application

was submitted based on Ext.P5 scheme. It was submitted on 23.12.2000. It was within the validity period of Ext.P5 scheme. At that time, as is revealed by Ext.P2 charge sheet dated 16.9.2000, a disciplinary action was pending against him. As pointed out by the counsel for the bank, going by Clause 4.2(c) of Ext.P5, because of such pendency of disciplinary action against him, he was not entitled to apply for voluntary retirement. The disciplinary action initiated as per Ext.P2 culminated in imposition of a minor penalty of censure as is revealed by Ext.P4 dated 4.1.2001. From 4.1.2001 onwards, no disciplinary action was pending against the writ petitioner. The currency of the scheme, Ext.P5, was in force until 19.1.2001. His application for voluntary retirement from service was considered and disposed of by Ext.P7 dated 8.5.2001 in the following lines:

> ***"We refer your aforesaid application for voluntary retirement under the captioned scheme and advise you that your application was placed before the competent authority and the said authority has declined to consider the same due to administrative reasons. We forward herewith P & C letter dated 24.04.2001 addressed to you from the Deputy General Manager intimating you the above, the duplicate copy of which may pleased be signed and sent back to us."***

The rejection was not because of the pendency or contemplation of any disciplinary action or because of the ineligibility clause in 4.2(c), but "due to administrative reasons".

12. It was obligatory, going by Clause 8(4) of Ext.P5 scheme, for the competent authority to record the reasons for rejecting an application for voluntary retirement. Administrative reason is not a reason contemplated by Ext.P5. Therefore, the challenge against Ext.P5 was upheld by a learned single Judge in Ext.P10 judgment and directed reconsideration of the matter. The reconsideration resulted in, as already

mentioned above, Ext.P12, one among the orders impugned by the writ petitioner.

13. A reading of Ext.P12 discloses that disciplinary action was pending when the application for voluntary retirement was filed on 23.12.2000 and that while his application was being considered, a charge sheet dated 16.9.2000 was pending. That reasoning is also not correct because the application was considered, as already mentioned above, in Ext.P7 dated 8.5.2001 by which time, the disciplinary action had already been terminated, as is revealed by Ext.P4 dated 4.1.2001. Therefore, rejection of the application for voluntary retirement on that ground cannot be stated to be sound and legal.

14. The learned single Judge considered this aspect in a different perspective, in spite of finalisation of Ext.P2 disciplinary action dated 16.9.2000 and Ext.P4 dated 4.1.2001, a further disciplinary action ought to

have been contemplated. That is not a relevant reason because no disciplinary action had been contemplated. Even if disciplinary action had been contemplated, going by clause 10 of Ext.P5, such applications also could have been considered depending upon the nature of each case. That also is not seen done while issuing Ext.P12. Therefore, we find that the learned single Judge erred in that regard and the learned single Judge ought to have quashed Ext.P12. Accordingly, we are of the view that Ext.P12 also cannot be sustained. Necessarily, his application dated 23.12.2000 for voluntary retirement shall have to be considered afresh.

15. At this point of time, we may also point out that the writ petitioner had submitted a resignation letter dated 31.7.2002, which was also not accepted by the bank. Necessarily, as he had preferred a resignation, the bank can also consider the said resignation as well.

Accordingly, quashing Ext.P12, we direct the bank to consider his application for voluntary retirement or the resignation, as the case may be, and pass appropriate orders accepting either of the two. Appropriate orders shall be passed in that regard within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
JUDGE

sk/

//true copy//

P.S. To Judge

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

W.A.No.1057 & 1175 of 2004 E

JUDGMENT

27th November, 2006.

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